

AGENDA BILL APPROVAL FORM

Agenda Subject: Ordinance No. 6244		Date: May 27, 2009
Department: Legal	Attachments: Ordinance No. 6244	Budget Impact:
Administrative Recommendation: City Council introduce and adopt Ordinance No. 6244.		
Background Summary: A revision of the City's dangerous dog ordinance, Chapter 6.35 ACC: A review of the current provisions of the Auburn City Code relating to dangerous dogs indicates a need for updating some of the provisions. If a person owns a dog that has been declared to be a dangerous dog in another jurisdiction and subsequently moves to the City of Auburn, under current provisions, the dog would not automatically be a dangerous dog. In those instances, it would be valuable for the protective provisions of Chapter 6.35 to apply to such a dangerous dog, and therefore, the provisions of Ordinance No. 6244 seek to automatically include a dog as dangerous if found to be so in another jurisdiction, prior to coming into the City of Auburn. Additionally, the costs involved in registering dangerous dogs should be increased from its current \$100.00 to a level to a level more consistent with the costs involved. Furthermore, while the current code provisions do not provide for a registration costs for potentially dangerous dogs, if that dog is a potentially dangerous dog by reason of a prior bite, attack, aggression or some other conduct, there should be a fee, though less than the amount that would be required for a dog having been deemed "dangerous." Additionally, it would be appropriate to add additional detail to the current provisions of the City Code to define what constitutes a proper enclosure for a dangerous dog. A0615-2 O1.1		
Reviewed by Council & Committees: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Arts Commission <input type="checkbox"/> Airport <input type="checkbox"/> Hearing Examiner <input type="checkbox"/> Human Services <input type="checkbox"/> Park Board <input type="checkbox"/> Planning Comm. </div> <div style="width: 45%;"> COUNCIL COMMITTEES: <input type="checkbox"/> Finance <input type="checkbox"/> Municipal Serv. <input type="checkbox"/> Planning & CD <input type="checkbox"/> Public Works <input type="checkbox"/> Other _____ </div> </div>		Reviewed by Departments & Divisions: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Building <input type="checkbox"/> Cemetery <input type="checkbox"/> Finance <input type="checkbox"/> Fire <input type="checkbox"/> Legal <input type="checkbox"/> Public Works </div> <div style="width: 45%;"> <input type="checkbox"/> M&O <input type="checkbox"/> Mayor <input type="checkbox"/> Parks <input type="checkbox"/> Planning <input type="checkbox"/> Police <input type="checkbox"/> Human Resources </div> </div>
Action: Committee Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Council Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Referred to _____ Until ____/____/____ Tabled _____ Until ____/____/____ <div style="text-align: right;">Call for Public Hearing ____/____/____</div>		
Councilmember: Cerino		Staff: Heid
Meeting Date: June 15, 2009		Item Number: VIII.A.1

ORDINANCE NO. 6 2 4 4

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AMENDING SECTIONS 6.35.010, 6.35.020, 6.35.030, 6.35.035 AND 6.35.040 OF THE AUBURN CITY CODE RELATING TO DANGEROUS DOGS

WHEREAS, the City of Auburn currently regulates the ownership of dangerous dogs in Chapter 6.35 of the Auburn City Code; and

WHEREAS, dogs that are declared dangerous in another jurisdiction and that subsequently are brought into the City of Auburn are only considered to be “potentially dangerous” under the city’s code; and

WHEREAS, the City Council believes that it is in the best interest of the City that a dog that is declared to be dangerous by another jurisdiction shall also be considered to be dangerous in the City; and

WHEREAS, the staff costs in administering the code provisions related to dangerous dogs exceeds the costs currently assessed to the owners of those dogs; and

WHEREAS, based on a review of the provisions of Chapter 6.35 ACC, Dangerous Dogs, it is appropriate to amend the provisions of the Chapter to better meet the needs of the City, and to address the City’s concerns.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, DO ORDAIN as follows:

Section 1. Amendment to City Code. That Section 6.35.010 of the Auburn City Code is amended to read as follows:

6.35.010 Dangerous dogs and related definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

A. "Potentially dangerous dog" means any dog that when unprovoked:

1. Inflicts bites on a human or a domestic animal either on public or private property;

2. Chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, or any dog with a known propensity, tendency, or disposition to attack unprovoked, or to cause injury or otherwise to threaten the safety of humans or domestic animals; or

3. Is known or should reasonably have been known by its owner to have aggressively bitten, attacked, or endangered the safety of humans or domestic animals.

4. "Potentially dangerous dog" also means any dog that is known by the owner or should reasonably be known by the owner to be an Akita, American Pit Bull Terrier, American Staffordshire Terrier, Bull Terrier, Cane Corso, Dogo Argentino, Dogue de Bordeaux, Kuvasz, Pit Bull Terrier, Presa Canario, Staffordshire Bull Terrier or Tosa Inu, or breed of any dog, or any mix of dog breeds which contains as an element of its breeding the breed of Akita, American Pit Bull Terrier, American Staffordshire Terrier, Bull Terrier, Cane Corso, Dogo Argentino, Dogue de Bordeaux, Kuvasz, Pit Bull Terrier, Presa Canario, Staffordshire Bull Terrier or Tosa Inu, as to be identifiable of or partially of such breed(s), or dogs that have an appearance and physical characteristics that are substantially similar to dogs referred to above.

B. "Dangerous dog" means any dog that has been declared to be a "dangerous dog" pursuant to the provisions hereof of this Chapter, or has been declared to be a "dangerous dog" pursuant to applicable code provisions by any other jurisdiction, by reason of the fact that the dog:

1. Killed or inflicted severe injury on a human being without provocation on public or private property;

2. Killed or inflicted severe injury on a domestic animal without provocation while the dog is off the owner's property;

3. Has been previously found to be potentially dangerous because of injury inflicted on a human, the owner having received notice of such and the dog again aggressively bites, attacks, or endangers the safety of humans;

4. Is a potentially dangerous dog, as defined in this chapter, that has been permitted or allowed to run free and unrestrained off the property of its owner;

5. Is a potentially dangerous dog, as defined in this chapter, that has harassed, tormented or caused concern for the safety of persons or domestic animals; or

6. Has, since the effective date of the ordinance codified in this chapter, demonstrated a propensity, tendency, or disposition to attack unprovoked, to cause injury, or otherwise to threaten the safety of humans or domestic animals.

It is provided, however, that a dog shall not be declared dangerous if the basis for such declaration was a threat, injury, or damage that was sustained by a person who, at the time, was committing a willful trespass or other tort upon the

premises occupied by the owner of the dog, or was tormenting, abusing, or assaulting the dog or has, in the past, been observed or reported to have tormented, abused, or assaulted the dog or was committing or attempting to commit a crime.

It is further provided that a dog shall not be declared dangerous if the owner of the dog can show that since the incident or action giving rise to the declaration, the owner has enrolled in and completed the American Kennel Club's Canine Good Citizen® (CGC) Program, or a comparable course or program addressing dog ownership responsibilities offered by a similarly recognized entity, which alternate course or program and/or entity shall be approved by the city. However, this proviso (this opportunity to avoid a dangerous dog declaration) shall not apply where the basis for the declaration was that the dog killed or inflicted severe injury on a human being without provocation on public or private property, as set forth in subsection (B)(1) of this section, or has killed or inflicted severe injury on a domestic animal without provocation while the dog is off the owner's property, as set forth in subsection (B)(2) of this section, or has been previously found to be potentially dangerous because of injury inflicted on a human, the owner having received notice of such and the dog again aggressively bites, attacks, or endangers the safety of humans, as set forth in subsection (B)(3) of this section. This proviso shall also not apply to instances where a dangerous dog declaration has been previously avoided because such training was given to the same owner for this or any other dog, or to any other person involving this same dog.

It is further provided that for the purposes of subsection (B)(4) of this section, there shall be a rebuttable presumption that a dog has been permitted or allowed to run free if the dog has been previously found running free and unrestrained off the property of its owner. This presumption may be rebutted by a showing that, since the effective date of the ordinance codified in this section, the dog has not previously been found running free and unrestrained off the property of its owner, and the owner has taken reasonable steps to prevent the dog from running free and unrestrained off the property of its owner.

C. "Severe injury" means any physical injury that results in broken bones or disfiguring lacerations requiring multiple sutures or cosmetic surgery.

D. "Proper enclosure of a dangerous dog" means, while on the owner's property, a dangerous dog shall be securely confined indoors or in a securely enclosed and locked pen or structure, suitable to prevent the entry of young children and designed to prevent the animal from escaping. Such pen or structure shall have secure sides and a secure top, and shall also provide protection from the elements for the dog, and shall either have a concrete floor or shall have secure fencing material buried not less than one foot below the surface. Additionally, the animal control authority, as defined herein, may determine, based on objective and identifiable reasons, that the enclosure is not adequate or proper, in which case the animal control authority shall communicate in writing to the owner of the dangerous dog the deficiencies in the enclosure and the objective and identifiable reasons that the enclosure is not adequate or proper, and the owner shall correct the deficiencies identified by the animal

control officer before the enclosure shall constitute a proper enclosure. The owner of the dangerous dog may appeal the animal control authority's determination that the enclosure is not adequate or proper, which appeal shall be filed in writing not more than ten days from the date the animal control authority communicates his/her determination that the enclosure is not adequate or proper, and which appeal shall be heard by the police chief or designee. The police chief or designee shall decide the appeal based on (1) whether the objective and identifiable reasons which were the basis of the animal control authority's determination have been shown, and (2) whether they reasonably support the decision that the enclosure is not adequate or proper. It is provided, however, that regardless of the materials used, or type and description of the enclosure, and regardless of the correction of any identified deficiencies, if the dangerous dog escapes from the enclosure, that escape shall constitute prima facie evidence that the enclosure was not a proper enclosure, and shall constitute prima facie evidence, as well, that the dog owner is not in compliance with the requirements of this Chapter.

E. "Animal control authority" means the persons and entities responsible for enforcement of the animal control laws of the city, or such person as is designated by the mayor, whether acting alone or in concert with other responsible persons and/or local governmental units.

F. "Animal control officer" means any individual employed, contracted with, or appointed by the animal control authority for the purpose of aiding in the enforcement of this chapter or any other law or ordinance relating to the licensure of animals, control of animals, or seizure and impoundment of animals, and includes any state or local law enforcement officer or other employee whose duties in whole or in part include assignments that involve the seizure and impoundment of any animal.

G. "Owner" means any person, firm, corporation, organization, or department possessing, harboring, keeping, having an interest in, or having control or custody of an animal. (Ord. 5996 § 1, 2006; Ord. 5829 § 1, 2004.)

Section 2. Amendment to City Code.

That Section 6.35.020 of

the Auburn City Code is amended to read as follows:

6.35.020 Dangerous dogs – Notice to owners – Right of appeal – Certificate of registration required – Surety bond – Liability insurance – Restrictions.

A. In addition to the enforcement authority with which the animal control authority has been vested pursuant to state law and/or the King County Code (adopted by reference pursuant to Chapter 6.32 ACC), the animal control authority shall be authorized to enforce the provisions of this chapter; provided, that in connection with the enforcement of the provisions of this chapter to seek to declare a dog within the city to be dangerous, the animal control authority shall employ the notification and appeal procedures as defined in this section, including serving notice upon the dog owner in person or by regular and certified mail, return receipt requested.

B. The notice must state: the basis for the proposed action; the reasons the authority considers the animal dangerous; a statement that the dog is subject to registration and controls required by this chapter, including a recitation of the controls in subsections F and G of this section; and an explanation of the owner's rights and of the proper procedure for appealing a decision finding the dog dangerous.

C. Prior to the authority issuing its final determination, the authority shall notify the owner in writing that he or she is entitled to an opportunity to meet with the authority, at which meeting the owner may give, orally or in writing, any reasons or information as to why the dog should not be declared dangerous, including the owner's compliance with the AKC's CGC program, or comparable course or program provisions as provided herein, if applicable. The owner may also request a reasonable delay before the final determination is made if the owner has already enrolled in the AKC's CGC program, or comparable course or program, if applicable. The notice shall state the date, time, and location of the meeting, which must occur prior to expiration of 10 calendar days following delivery of the notice. The owner may propose an alternative meeting date and time, but such meeting must occur within the 10-day time period set forth in this section. After such meeting, the authority must issue its final determination, in the form of a written order, within 10 calendar days. In the event the authority declares a dog to be dangerous, the order shall include a recital of the authority for the action, a brief concise statement of the facts that support the determination, and the signature of the person who made the determination. The order shall be sent by regular and certified mail, return receipt requested, or delivered in person to the owner at the owner's last address known to the authority.

D. The owner may appeal the authority's final determination that the dog is dangerous to the city's hearing examiner, which appeal shall be in accordance with the provisions herein and pursuant to the procedures of ACC 4.25.090 the city code. Any such appeal by the owner shall be perfected by filing a written notice of such appeal with the city clerk within 15 days of the date the owner received the final determination if the order was delivered in person, or within 20 days of the date the order was mailed to the owner, by filing a written notice of appeal with the city clerk. While the appeal is pending, the authority may order that the dog be confined or controlled in compliance with ACC 6.35.030 and/or RCW 16.08.090. If the dog is determined to be dangerous, the owner must pay all costs of confinement and control.

E. It is unlawful for an owner to have a dangerous dog in the city without a certificate of registration issued pursuant to this section. This section and ACC 6.35.030 and 6.35.040 shall not apply to police dogs as defined in ACC 6.32.030 and/or RCW 4.24.410.

F. The animal control authority shall issue a certificate of registration to the owner of a dog deemed to be a dangerous dog if the owner presents to the animal control unit sufficient evidence of:

1. A proper enclosure to confine a dangerous dog, as such enclosure is defined and described in Paragraph D of Section 6.35.010 ACC, and the

posting of the premises with a clearly visible warning sign that there is a dangerous dog on the property. In addition, the owner shall conspicuously display a sign with a warning symbol that informs children of the presence of a dangerous dog;

2. A surety bond issued by a surety insurer qualified under Chapter 48.28 RCW in a form acceptable to the animal control authority in the sum of at least \$250,000, payable to any person injured by the dangerous dog, or such surety bond that otherwise meets the requirements of RCW 16.08.080; or

3. A policy of liability insurance, such as homeowner's insurance, issued by an insurer qualified under RCW Title 48 in the amount of at least \$250,000, insuring the owner for any personal injuries inflicted by the dangerous dog, or such liability insurance that otherwise meets the requirements of RCW 16.08.080.

G. Any dog which is declared to be a "dangerous dog" pursuant to this chapter or Chapter 16.08 RCW shall also be required to be microchipped by a veterinarian of the owner's choice, at the owner's expense. This shall be in addition to the other requirements of this chapter and in addition to the applicable requirements for licensing as defined within this title, and this procedure must be accomplished within 30 days after the owner's receipt of the dangerous dog declaration issued pursuant to this chapter or Chapter 16.08 RCW.

H. In addition to regular dog licensing fees, the owner of a dangerous dog shall pay to the city a dangerous dog registration fee in the amount of ~~\$100.00~~ \$500 per year for the dangerous dog registration, and shall comply with the city's dangerous dog registration procedures, including providing the city with a photograph of the dangerous dog, each year. Such photograph(s) shall show the dog's coloring and body shape. (Ord. 5996 § 1, 2006; Ord. 5829 § 1, 2004.)

Section 3. Amendment to City Code.

That Section 6.35.030 of

the Auburn City Code is amended to read as follows:

6.35.030 Dangerous dogs and potentially dangerous dogs – Requirements for restraint.

A. It is unlawful for an owner of a dangerous dog to permit the dog to be outside the proper enclosure, as defined and described in Paragraph D of Section 6.35.010 ACC, unless the dog is muzzled and restrained by a substantial chain or leash and under physical restraint of a responsible person. The muzzle shall be made in a manner that will not cause injury to the dog or interfere with its vision or respiration but shall prevent it from biting any person or animal.

B. It is unlawful for an owner of a potentially dangerous dog to permit the dog to be allowed or permitted to run free and unrestrained or off-leash or not otherwise under physical restraint of a responsible person, unless within a fenced yard or similar restraint reasonably designed to prevent the dog from running free and unrestrained.

C. It is unlawful for an owner of a dangerous dog or a potentially dangerous dog to permit the dog to be walked outside the proper enclosure by anyone under the age of 16 years.

D. The owners of dangerous dogs and potentially dangerous dogs are responsible for taking all reasonable measures to assure that the dogs do not escape the above restraints, the failure of which responsibility shall constitute a violation of this chapter, punishable pursuant to ACC 6.35.040. The failure of the owner of a dangerous dog to comply with the requirements for dangerous dog registration shall also constitute a violation of this chapter, punishable pursuant to ACC 6.35.040. (Ord. 5996 § 1, 2006; Ord. 5829 § 1, 2004.)

Section 4. Amendment to City Code. That Section 6.35.035 of the Auburn City Code is amended to read as follows:

6.35.035 Registration of potentially dangerous dogs.

In addition to the dog licensing requirements, as set forth in Chapter 6.32 ACC, the owners of potentially dangerous dogs, as defined herein, shall file with the city clerk a notice of potentially dangerous dog according to the form available from the city clerk. There shall be no fee charged for such potentially dangerous dog registration, other than as follows: The owner of a potentially dangerous dog that was previously found to be a potentially dangerous dog because: (1) while unprovoked, it attacked, bit, endangered or injured a human or a domestic animal, or (2) it has chased or approached a person upon a street, sidewalk, or public grounds in a menacing fashion, shall pay to the city a fee in the amount of \$100 per year for the registration of the potentially dangerous dog. Failure to comply with this provision shall constitute a violation of this chapter, punishable as a misdemeanor in accordance with ACC 9.02.030040. (Ord. 5996 § 1, 2006.)

Section 5. Amendment to City Code. That Section 6.35.040 of the Auburn City Code is amended to read as follows:

6.35.040 Dangerous dogs – Confiscation – Conditions – Duties of animal control authority – Penalties.

Any dangerous dog shall be subject to immediately confiscated confiscation by the animal control authority if: (a) the dog is not validly registered under ACC 6.35.020 or if brought into the City after having been declared dangerous in any other jurisdiction, has not been validly registered within 10 days of its first arrival within the City; (b) the owner does not secure the liability insurance coverage required under said ACC 6.35.020; (c) the dog is not maintained in the proper enclosure as defined and described in Paragraph D of Section 6.35.010 ACC; or (d) the dog is outside of the dwelling of the owner, or outside of the proper enclosure and not under physical restraint of a responsible person. The owner must pay the costs of confinement and control. The animal control authority must serve notice upon the dog owner in person or by regular and certified mail, return receipt requested, specifying the reason for the

confiscation of the dangerous dog, that the owner is responsible for payment of the costs of confinement and control, and that the dog will be destroyed in an expeditious and humane manner if the deficiencies for which the dog was confiscated are not corrected within 20 days. The animal control authority shall destroy the confiscated dangerous dog in an expeditious and humane manner if any deficiencies required by this section are not corrected within 20 days of notification. In addition, other than where violations are prosecuted as a felony pursuant to RCW 16.08.100, any owner who violates the provisions of this chapter shall be guilty of a gross misdemeanor punishable in accordance with ACC 9.02.030. (Ord. 5996 § 1, 2006; Ord. 5829 § 1, 2004.)

Section 6. Implementation. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

Section 7. Severability. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 8. Effective date. This Ordinance shall take effect and be in force five days from and after its passage, approval and publication as provided by law.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

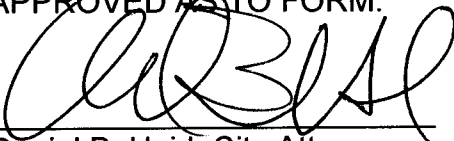
CITY OF AUBURN

PETER B. LEWIS
MAYOR

ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:



Daniel B. Heid, City Attorney

Published: _____